

by Plaintiffs in opposition to the Bill of Costs, at hearing.

Defendants did not appear at hearing. Rather than enter default judgment as to the Bill of Costs, the Court Clerk contacted Defendants and allowed them to appear by telephone and the parties presented their arguments. The Court Clerk then denied costs based upon the wording of the Judgment.

Defendants filed this motion for review based upon the assumption that the Court did not intend the Judgment to preclude recovery of their costs and urging the mandatory language of Fed.R.Civ.P. 54(d)(1) compels an award of costs in this products liability action. Defendants cite to Rule 54(d)(1), stating the rule says, in pertinent part: "costs other than attorney' fees shall be allowed as of course to the prevailing party. . . ." The Court finds the omitted language is, in fact, the pertinent part in this case. The completion of the sentence reads: "unless the Court otherwise directs." This is exactly what the Court did.

Defendants urge the Court is compelled to provide its reasoning in entering the Judgment. This is generally true when the Court is reviewing an award or disallowance of costs entered by the Court Clerk on appeal . However, in this case, the Court, which had presided over the trial only days before entry of Judgment, elected to direct each party to pay its own costs. Defendants have raised no issues which merit amendment or reversal of the Judgment even if timely filed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Review Taxation of Costs [Dkt #124] is denied.

DATED THIS 15TH DAY OF NOVEMBER, 2005.


Sam A. Joyner
United States Magistrate Judge

